

## **ATTACHMENT B**

### **Revisions to CPUC Rule 2.3 and Rule 2.3.1 Regarding Electronic Service**

**Effective March 24, 2005**

**(See D.04-12-057 for Related Revisions to Other Rules)**

#### **2.3. (Rule 2.3) Service**

(a) Except as otherwise provided in these rules or applicable statute, service of a document may be effected by delivering a copy of the document, mailing a copy of the document by first-class mail, or making service by electronic mail (e-mail) as provided in Rule 2.3.1 to each person whose name is on the official service list or applicable special service list, to the assigned administrative law judge, and to any other person required to be served by statute, by Commission rule or order, or by the administrative law judge. Delivery may be made by handing a copy of the document to the person or leaving it in a place where the person may reasonably be expected to obtain actual and timely receipt. Service by mail is complete when the document is deposited in the mail. Service by e-mail is complete when the e-mail message is transmitted, subject to Rule 2.3.1(e). The administrative law judge may require more expeditious service or a particular form of service in appropriate circumstances.

(b) In the event that service cannot be completed by any of the methods described in Rule 2.3(a), the administrative law judge may direct or any party may consent to service by other means not listed in Rule 2.3(a) (e.g., facsimile transmission).

(c) A party may serve a Notice of Availability in lieu of all or part of the document to be served. A copy of the complete document must, however, be served on any party who has previously informed the serving party of its desire to receive a complete copy. The original document and copies filed with the Commission must be complete (see Rule 2.5). A separate Notice must be provided for each document to be served, unless the assigned commissioner or administrative law judge authorizes a Notice to include reference to more than one document. The Notice must comply with Rule 2.1(a) and, if relevant, Rule 2.3.1 and must state the document's exact title and summarize its contents. The Notice must state that a copy of

the document will be served at the request of the party receiving the notice, and must state the name, telephone number, e-mail address, if any, and facsimile transmission number, if any, of the person to whom such requests should be directed. The party sending the Notice must serve any party making such request within one business day after receipt of the request. If a Notice of Availability is served by e-mail in accordance with Rule 2.3.1, the e-mail message must contain in its subject line in the following order: the docket number of the proceeding and the words "notice of availability," followed by a brief name of the proceeding, and a brief identification of the document to be served, including the name of the serving party.

(d) A Notice of Availability may be served in any of the following circumstances:

- (1) if the entire document, including attachments, exceeds 50 pages; or
  - (2) if a document served by sending an e-mail message with the document attached in accordance with Rule 2.3.1(b) has attachments that are not reproducible in electronic format, or would cause the entire e-mail message, including all attachments, to exceed 3.5 megabytes in size, or would be likely to cause e-mail service to fail for any other reason; or
  - (3) if the entire document is served by making it available at a particular Uniform Resource Locator (URL) on the World Wide Web (web); or
  - (4) with the prior permission of the assigned commissioner or administrative law judge.
- (e) If the document is served by making it available at a particular URL, in addition to the requirements of subd.(c) and (d) of this Rule, the Notice of Availability must contain a complete and accurate transcription of the URL or a hyperlink to the URL at which the document to be served has been made available in a readable, downloadable, printable, and searchable format, unless use of such format is infeasible, and must state the date on which the document was made available at that URL. Such a Notice may contain information about how to access or download the document to be served, or any other information required or allowed by the assigned commissioner or administrative law judge; it may not contain any attachments.
- (f) A document served by making it available at a particular URL must be maintained at that URL until the Commission's final decision in the proceeding in which the document was served is no longer subject to judicial review. If changes to the web site change the URL for the document, the serving party must serve and file a notice of the new URL.

(g) A copy of the certificate of service must be attached to each copy of the document (or Notice of Availability) served and to each copy filed with the Commission. If a Notice of Availability is served, a copy of the Notice must also be attached to each copy of the document filed with the Commission. The certificate of service must state: (1) the exact title of the document served, (2) the place, date, and manner of service, and (3) the name of the person making the service. The certificate filed with the original of the document must be signed by the person making the service (see Rule 2.2(e)). The certificate filed with the original of the document must also include a list of the names, addresses, and, where relevant, the e-mail addresses of the persons and entities served and must indicate whether they received the complete document or a Notice of Availability. (See Rule 88, Form No. 6.)

(h) The Process Office shall maintain the official service list for each pending proceeding and post the service list on the Commission's web site. It is the responsibility of each person or entity on the service list to provide a current mailing address and, if relevant, current e-mail address, to the Process Office for the official service list. A party may change its mailing address or e-mail address for service or its designation of a person for service by sending a written notice to the Process Office and serving a copy of the notice on each person on the official service list.

(i) The administrative law judge may correct and make minor changes to the official service list and may revise the official service list to delete inactive parties. Before establishing a revised service list, the administrative law judge will give each person on the existing service list notice of the proposed revision and an opportunity to respond to the proposal.

(j) The administrative law judge may establish a special service list for documents related to a portion of a proceeding. A special service list allows service to be made on only a portion of the official service list. A special service list may be established, for example, for one phase of a multi-phase proceeding or for documents related to issues that are of interest only to certain parties. Before any special service list is established, the administrative law judge will give each person on the official service list notice of the proposal to establish a special service list and an opportunity to show why that person should be included on the special service list or why a special service list should not be established.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311.5, 1704, Public Utilities Code.

### **2.3.1. (Rule 2.3.1) Service by Electronic Mail (E-Mail Service)**

(a) E-mail service may be used in any proceeding which has been assigned a docket number.

(b) E-mail service may be made by sending the entire document to be served as an attachment to an e-mail message to the e-mail address of all persons shown on the official service list on the date of service; or by sending an e-mail with a Notice of Availability attached in accordance with Rule 2.3(c) and (d) to the e-mail address of all persons on the official service list on the date of service; or by any other method of e-mail service directed by the assigned commissioner or administrative law judge.

(c) When serving documents as attachments to an e-mail message, the serving party must include in the subject line of the message in the following order: the docket number of the proceeding, a brief name of the proceeding, and a brief identification of the document to be served, including the name of the serving party. The serving party must also include in the text of the message the electronic format of the document (e.g., PDF, Excel), whether the e-mail message is one of multiple e-mail messages transmitting the document or documents to be served, and the name, telephone number, e-mail address, and facsimile transmission number of the person to whom problems with receipt of the document to be served should be directed. Documents served as attachments to an e-mail message must be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Where appropriate, the assigned ALJ may require particular formats to be used. The total size of the e-mail message and all attached documents to be served may not exceed 3.5 megabytes.

(d) By providing an e-mail address for the official service list in a proceeding, a person consents to e-mail service in any proceeding in which the person is on an official service list. A person who has previously provided an e-mail address may withdraw consent to e-mail service in a particular proceeding by serving and filing a notice withdrawing consent to e-mail service for that proceeding. A person who does not consent to receive e-mail service in a proceeding may not use e-mail to serve documents in that proceeding.

(e) By utilizing e-mail service, the serving party agrees, in the event of failure of e-mail service, to re-serve the document, no later than the business day after the business day on which notice of the failure of e-mail service is received by the serving party, by any means authorized by these rules, provided that e-mail service may be used for re-service only if (1) the receiving party consents to the use of e-mail service, or (2) the serving party determines that the cause of the failure of e-mail service has been rectified. "Failure of e-mail service" occurs when the serving party receives notification, in any manner, of non-receipt of an

e-mail message, or of the receiving party's inability to open or download an attached document, or of any other inability of the receiving party to access the document to be served. The serving party and receiving party may agree to any form for re-service allowed by these rules. The serving party is not required to, but may agree to, re-serve any person listed in the Information Only section of the official service list after failure of e-mail service to such person.

(f) In addition to any other requirements of this rule, the serving party must provide a paper copy of all documents served by e-mail service to the assigned administrative law judge, unless the administrative law judge orders otherwise.

(g) The Commission may serve any document in a proceeding by e-mail service, and/or by making it available at a particular URL, unless doing so would be contrary to state or federal law.

(h) Nothing in this rule alters any of the rules governing filing of documents with the Commission.

(i) The assigned commissioner or administrative law judge may issue any order consistent with these rules to govern e-mail service in a particular proceeding.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 311.5, Public Utilities Code; Section 11104.5, Government Code.